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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

No. 986

HARBOR MARINE CONTRACTING COMPANY, a Corporation,

and

LIBERTY MUTUAL INSURANCE COMPANY, a Corporation,

Petitioners,

v.

SAMUEL S. LOWE, Deputy Commissioner of the United States Employees' Compensation Commission, Second Compensation District,

and

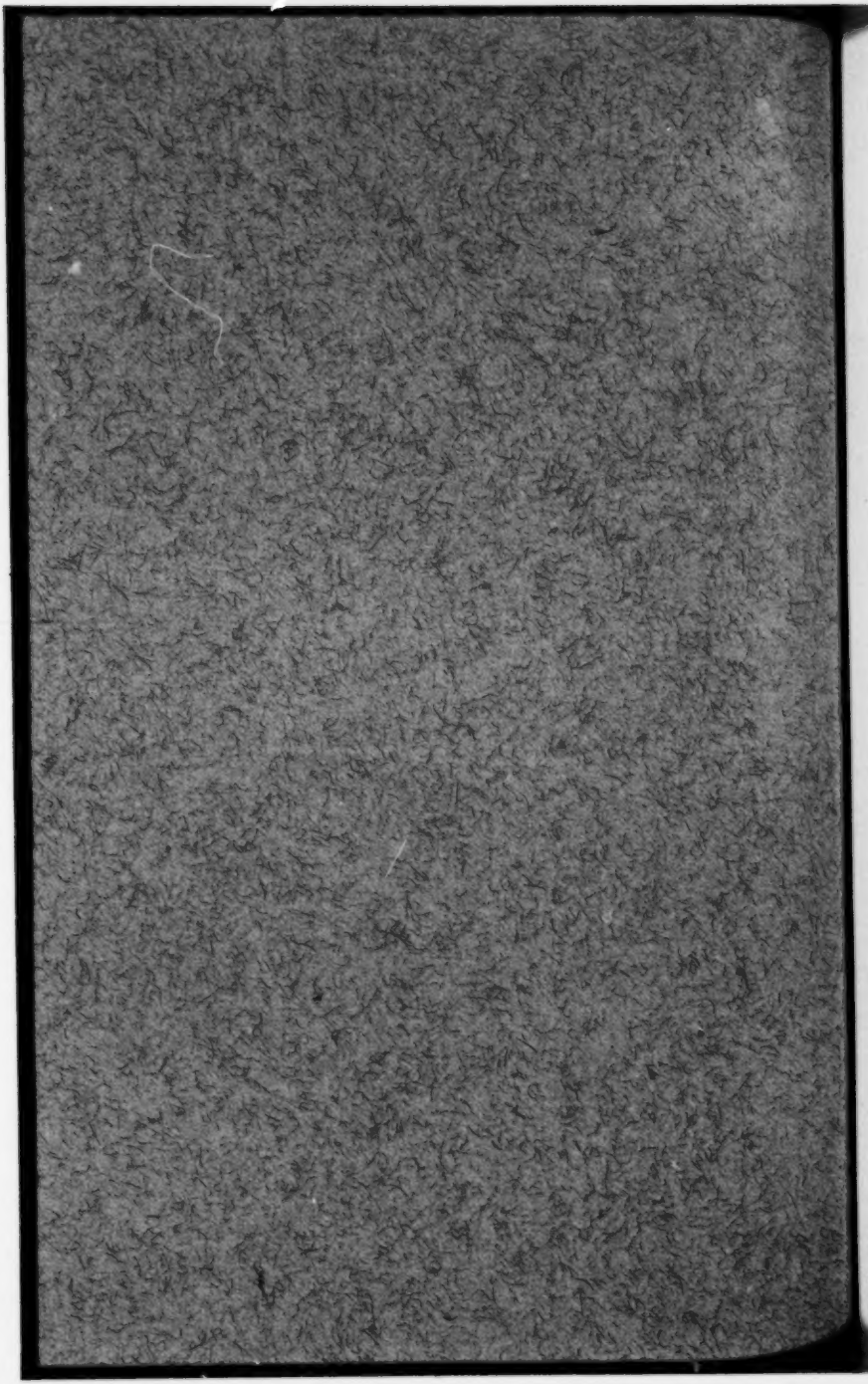
FRANCOIS RIVIERAO,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

NELSON T. HARRISON,
HOWARD BOYD,
GEORGE E. MONK,
Counsel for Petitioners.

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IN THE

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OCTOBER TERM, 1945.

No. ————.

HARBOR MARINE CONTRACTING COMPANY, a Corporation,

and

LIBERTY MUTUAL INSURANCE COMPANY, a Corporation,
Petitioners,

v.

SAMUEL S. LOWE, Deputy Commissioner of the United States Employees' Compensation Commission, Second Compensation District,

and

FRANCES RIVIELLO,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Harbor Marine Contracting Company, a corporation, and Liberty Mutual Insurance Company, a corporation, respectfully petition this Honorable Court to issue a writ of cer-

tiorari to review the judgment of the United States Circuit Court of Appeals for the Second Circuit in the above entitled case (its Docket No. 19964) on December 24, 1945 (R. 125) affirming an order and judgment of the United States District Court for the Southern District of New York.

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This case involves the construction and interpretation of the following section of the Longshoremen's and Harborworkers' Compensation Act (Act of March 4, 1927, c. 509, 44 Stat. 1424; 33 U. S. C. 901-950):

> "Sec. 902. Definitions. When used in this chapter—
>
> * * *
>
> (2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.
>
> * * *
>
> (11) "Death" as a basis for a right to compensation means only death resulting from an injury."

The respondent Samuel S. Lowe as deputy commissioner awarded death benefits under said Act to respondent Frances Riviello as a result of the death of her husband, Biagio Riviello, an employee of petitioner Harbor Marine Contracting Company (R. 11).

Suit to set aside the award was filed under section 21 of the Act (33 U. S. C. 921) in the United States District Court for the Southern District of New York by petitioners, the petitioner Liberty Mutual Insurance Company being the compensation insurance carrier (R. 3). Said District Court

dismissed petitioners' complaint and rendered final judgment for respondents upon a motion by petitioners and a cross motion by respondents for summary judgment, the issues raised by the complaint and answer being only questions of law (R. 115).

On appeal to the United States Circuit Court of Appeals for the Second Circuit the judgment of the District Court was affirmed (R. 125).

The petitioners will hereinafter be referred to as plaintiffs, and the respondents as defendants.

On February 15, 1943, Biagio Riviello, hereinafter referred to as "the deceased", commenced to work for the plaintiff employer (R. 23). He had never worked for plaintiff employer prior to that day. The plaintiff employer was engaged in doing certain repair work upon a ship designated as Hull No. 162. Part of the repair work consisted in cleaning the ship's boilers which had been shut down for 48 hours prior to the commencement of the work. The deceased was assigned to a gang whose job was to sweep the soot from the floor of the boiler with a long handled broom. The space inside the boiler was at least 30 feet long, about 35 feet wide, and about 48 feet high. It was dirty work because the soot flew around and the ventilation was not very good (R. 9, 42), but they had masks for protection and many of them found that a clean rag over the nose and mouth was even better (R. 42). All that these men had to do, including the deceased, was to clean up the soot and put it in bags (R. 41). According to the foreman, it was light work (R. 33, 42).

After the deceased had been doing this work for about an hour the gang foreman told the head foreman that the deceased complained that he was not feeling well (R. 33). The head foreman told the gang foreman to put the deceased to work up on deck carrying bags of soot from the ship to the pier. This consisted of carrying bags of soot, weighing about 15 pounds each, one bag at a time, a distance of about one block (R. 34). After doing this work for about 45 minutes, the deceased complained that he did

not feel well and was taken to the hospital. There was no testimony concerning the occasion for taking deceased to hospital other than the complaint of not feeling well. He was taken to the Army doctors on the pier and from there was taken to the hospital (R. 34).

The hospital records stated that while the deceased was at work he had a sudden severe pain over his heart and had never had any similar attacks (R. 95). During the first few days in the hospital the deceased's condition was poor, the hospital records indicating that he was acutely ill suffering from a heart condition known as myocardial infarct (R. 96). Upon medication and rest the deceased gradually came back to normal and on March 30, 1943, he was discharged with the remark that he made a very good, uneventful recovery and was discharged in good condition (R. 99).

After his discharge the deceased returned home and did no work (R. 27). He complained of pain and was treated by a doctor who advised him to lie in bed and be very careful (R. 27). However, on April 26, 1943, according to the hospital records, the deceased was again admitted to the hospital, and the history states that after the deceased's original discharge from the hospital on March 30, he was at home feeling well until April 17 when he had a severe pain over the heart (R. 103). The pain continued until his readmission to the hospital on April 26. He died on May 5, 1943 while in the hospital. The final diagnosis on the hospital records was death from cardiac failure, myocarditis and coronary sclerosis with extreme narrowing of the anterior descending branch of the left coronary and infarct of the left ventricular wall (R. 105, 109).

The defendant claimant as the deceased's widow thereupon filed claim for death benefits for herself and children under the Longshoremen's and Harborworkers' Compensation Act, contending that the deceased, her husband, had sustained an accidental injury arising out of and in the course of his employment which resulted in his death (R. 23). The plaintiffs as employer and compensation insurance carrier took issue with this contention, and asserted

that his disability and death was due to an illness (R. 23).

Prior to February 15, 1943, the deceased was suffering from a progressive disease known as coronary sclerosis, a deterioration of the coronary arteries (R. 9, 71, 80, 81). Medical testimony was produced in behalf of claimant (refuted, however, by defendants (R. 55)) that the coronary condition suffered by the deceased on February 15 was causally connected with the work that decedent was doing for the plaintiff employer on the morning of that day (R. 79).

After hearing before defendant Lowe as Deputy Commissioner, there was issued a compensation order awarding death benefits to the widow for herself and her dependent children and making among others the following findings of fact (R. 8):

1. That while the deceased was engaged in his work on February 15, 1943, he became ill.

2. That the illness was due to a coronary infarct which was induced by his work and working conditions on the morning of his employment.

3. That deceased died on May 5, 1943 of coronary sclerosis.

4. That the death was a result of the accidental injury sustained in the course of his employment on February 15, 1943.

There was no evidence or finding that there was any unusual incident or unusual strain or unusual occurrence or unusual working conditions or excessive exertion occurring during deceased's work and operating as a cause of his death. There was only evidence that the ordinary light work that deceased was doing for plaintiff employer on February 15, 1943 caused the condition from which he later died because his diseased heart could not stand the exertion required by such work.

The only issue in litigation in the District Court and Circuit Court of Appeals below was whether there was any sub-

stantial proof that deceased's death resulted from an "accident" within the meaning of the section of the statute which limits compensation to disability or death resulting from "accidental injury" (33 U. S. C. 902 Sub. 2).

B.

JURISDICTION.

The judgment of the United States Circuit Court of Appeals for the Second Circuit was entered December 24, 1945.

The jurisdiction of this Court is invoked under its Rule 38 (5) and Section 240 (a) of the Judicial Code as amended by Act of February 13, 1925 (28 U. S. C. 347 (a)).

C.

QUESTIONS PRESENTED.

1. What is the scope and meaning of the term "accidental injury" as used in Section 2 (2) of the Federal Longshoremen's and Harbor Worker's Compensation Act (33 U. S. C. 902 (2))?

2. Are benefits or compensation payable under said Longshoremen's and Harbor Worker's Compensation Act for "accidental injury" where the employee dies from a pre-existing heart disease and there has been no accident, i.e., an unusual, undesigned, fortuitous and unexpected event as a result of which an injury follows, operating as a cause of the death?

3. Does the term "accidental injury" within the meaning of the Section 2 (2) of the said Longshoremen's and Harbor Worker's Compensation Act apply to heart failure on the part of an employee (with pre-existing heart disease) resulting only from the employee's ordinary and usual work without there being any unusual incident or unusual strain or unusual occurrence or unusual working conditions or excessive exertion operating as a cause of such heart failure?

D.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The Circuit Court of Appeals below has decided an important question of federal law involving construction of a federal statute, which question has not been, but should be, settled by this Court. See *Del Vecchio* v. *Bowers,* 296 U. S. 280, 285.

2. The case here presented is of great, general importance and relates to the construction and effect to be given to Section 2 of the federal Longshoremen's and Harbor Workers' Compensation Act (33 U. S. C. 902). See *Canadian Aviator* v. *United States,* 324 U. S. 215, 216.

3. The definition of "accidental injury" under the federal Longshoremen's and Harbor Workers' Compensation Act is of such paramount importance to all employees and employers governed by the Act as to call for an exercise of this Court's power of supervision over this cause. Such definition would fix with certainty in a large group of cases under the Act a limit to the rights of claimants and the liability of employers and insurance carriers.

4. The decision below results in a substantial denial of justice. Heart disease develops from the ordinary risks of life, and is now one of the principal causes of death. Said decision placing liability upon the employer, as an accident, for heart failure resulting from ordinary and usual work without an unusual incident or unusual strain or unusual occurrence or unusual working conditions or excessive exertion on part of employee has the practical effect of converting workmen's compensation to health or life insurance with respect to heart disease and similar ailments. It is always possible for a claimant to produce medical testimony that any exertion, however, slight, would be a contributing cause to heart failure, and thus satisfy the requirement that the finding of causal relationship be supported by evidence. Said decision unjustly places the en-

tire burden of a pre-existing illness, like heart disease, on the last employer. This is especially true in the present case where the heart failure representing the culmination of a pre-existing heart disease happened to occur during an employment which had commenced only on the same morning of the heart attack and had not continued more than two hours. Said decision will be detrimental to workers in that it will tend to cause the requirement for employment that employees be young and in perfect physical condition. The work the deceased was doing on February 15, 1943, the day of the heart attack, was so light that any of deceased's normal activities could have been the "last straw". In fact, the disease was of such progressive nature that death could have resulted without exertion.

5. The United States Circuit Court of Appeals below gave an erroneous interpretation of the term "accidental injury" as used in Section 2 of the said Federal Longshoremen's and Harbor Workers' Compensation Act (33 U. S. C. 2 (2)). It is respectfully submitted that normal working conditions (hastening disability or death caused by a pre-existing disease) should not be considered as accidental. See *Pierce* v. *Phelps*, 26 Pac. (2d) 1017 (Arizona-1933); *Standard Gas Equipment Corp.* v. *Baldwin*, 152 Md. 321, 136 A 644 (1927); *Woodruff* v. *Howes*, 228 N. Y. 276, 127 N. E. 270 (1920); *La Fountain* v. *La Fountain*, 284 N. Y. 729, 31 N. E. (2d) 199 (1940); *Lamphier* v. *Air Preheater Corp.*, 278 N. Y. 403, 16 N. E. (2d) 382; *Crispin* v. *Leedom and Worrall Co.*, 341 Pa. 325, 19 A (2d) 400 (1941). The New York opinions are especially persuasive and indicative of congressional intent as the federal Act was modeled on the New York Workmen's Compensation Law.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be named therein, a full

and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 19964, HARBOR MARINE CONTRACTING COMPANY and LIBERTY MUTUAL INSURANCE COMPANY, *Plaintiffs-Appellants*, v. SAMUEL S. LOWE, Deputy Commissioner of the United States Employees' Compensation Commission, Second Compensation District, and FRANCES RIVIELLO, *Defendants-Appellees*, and that the judgment therein of said United States Circuit Court of Appeals for the Second Circuit be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioners will ever pray.

HARBOR MARINE CONTRACTING COMPANY
and
LIBERTY MUTUAL INSURANCE COMPANY,

By NELSON T. HARTSON,
HOWARD BOYD,
GEORGE E. MONK,
Counsel for Petitioners.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

OPINIONS BELOW.

The opinion of the United States District Court for the Southern District of New York was rendered April 30, 1945 (R. 110), and is reported in 61 F. Supp. 964.

The opinion of the United States Circuit Court of Appeals for the Second Circuit was rendered December 24, 1945 (R. 123), and is reported in 152 F. (2d) 845.

II.

STATEMENT OF THE CASE.

A statement of the facts and questions involved will be found in the petition for writ of certiorari on pages 2-6 thereof.

III.

SPECIFICATION OF ERRORS.

The United States Circuit Court of Appeals for the Second Circuit erred:

1. In affirming the judgment for respondents rendered by the United States District Court for the Southern District of New York;

2. In holding that the finding of defendant Samuel S. Lowe as deputy commissioner that the deceased died from accidental injury arising out of and in the course of his employment with plaintiff employer is supported by the evidence;

3. In holding that mere proof of causal relationship between conditions of deceased's work and his heart attack without there being any proof of unusual incident or unusual strain or unusual occurrence or unusual working con-

ditions or excessive exertion operating as a cause of said heart attack is sufficient to support a finding by defendant Samuel S. Lowe that deceased's death was a result of an "accidental injury" sustained in the course of his employment on February 15, 1943;

4. In holding in effect that recovery or "accidental injury" under federal Longshoremen's and Harbor Workers' Compensation Act does not require proof of an accident causing the injury.

IV.

ARGUMENT.

Summary of the Argument.

Point 1: The questions involved, concerning the interpretation of a federal statute, are of substantial general importance, and should be definitely settled by this Court.

Point 2: The Circuit Court of Appeals below erroneously interpreted the term "accidental injury" as used in Section 2(2) of the Longshoremen's and Harbor Workers' Compensation Act (33 U. S. C. 902(2)), and consequently erroneously held that the finding of the Deputy Commissioner, that death of deceased was caused by accidental injury, is supported by substantial evidence.

Point 1.

The questions involved, concerning the interpretation of a federal statute, are of substantial general importance, and should be definitely settled by this Court.

The definition and meaning of "accidental injury" is of paramount importance to all employees and their families and to all employers under the Act because it provides the very basis for putting the Act into operation and awarding compensation. The primary purpose of every workmen's compensation statute is to make provision for the results of accidental injury. This is likewise true of the federal Act

here in issue (which Act also includes as compensable "injury" occupational disease and injury caused by willful act of a third person, neither of which is involved in this case).

The Circuit Court of Appeals below has extended the meaning of what is ordinarily and popularly considered as accidental to include sickness or death resulting from the effect of a person's normal and usual work activities on a pre-existing and progressive disease. It is obvious that such definition will affect, as well as result in, a large number of claims under the Act.

It is of the utmost importance that the matter be settled by this Court. Such action would have the benefit of preventing the filing of numerous unfounded claims and defenses or the denial of numerous just claims and defenses, with all the attendant expenses of litigation through the various phases of appeal and review in the federal courts.

Few questions concerning the Act could be more important that the proper interpretation of "accidental injury", the happening which in most cases is the starting point for all rights and proceedings under the Act. A decision in this regard will constitute "a precedent of general application." See *Del Vecchio* v. *Bowers*, *supra*, 285.

Point 2.

The Circuit Court of Appeals below erroneously interpreted the term "accidental injury" as used in Section 2(2) of the Longshoremen's and Harbor Worker's Compensation Act (33 U. S. C. 902(2)), and consequently erroneously held that the finding of the Deputy Commissioner, that death of deceased was caused by accidental injury, is supported by substantial evidence.

It is respectfully submitted that "accidental injury" means injury by accident, and requires the claimant to produce proof of an accident, i.e., proof of some unexpected and unforeseen event definable in space and time, as a result of which the deceased met his death. Such unexpected and unforeseen event may be either an unusual incident or un-

usual strain or unusual occurrance or unusual working conditions or excessive exertion. This view is supported by the following authorities:

Pierce v. *Phelps Dodge Corp.*, 26 Pac. (2d) 1017, Arizona, 1933;
Standard Gas Equipment Corp. v. *Baldwin*, 152 Md. 321, 136 A 644 (1927);
Woodruff v. *Howes*, 228 N. Y. 276, 127 N. E. 270 (1920);
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Beaver v. *Town of Collins*, 263 A. D. 1033, New York (1942);
Crispin v. *Leedom A. Worrall*, 341 Pa. 325, 19 A (2d) 400 (1941);
Rathmell v. *Borough of Wesleyville*, 351 Pa. 14, 40 A (2d) 28 (1944).

It is difficult to understand how normal activities at work may constitute an accident except by torturing the term "accidental injury" into something it actually does not mean. When ordinary work conditions cause a pre-existing disease to become acute, there is nothing more than ordinary wear and tear which the Act is not intended to provide for. There comes a time in the life of everyone who lives without accident, when normal and unpreventable deterioration of body organs reaches a point that the exertion of normal activities will cause a breakdown evidenced by acute illness or death. To hold that an accident has occurred if such time happens to arrive during hours of employment extends the coverage of the Compensation Act far beyond the legislative intention, and converts it into health or life insurance. The federal Compensation Act, like other such acts, was designed to avoid the harshness of the common law rule of recovery based on negligence and to provide relief to workmen and their families for industrial mishaps. The cost of such relief becomes part of the expenses of production, is borne by the employers and

the ultimate consumer, principally the latter in the form of increased prices of consumer goods. While it is reasonable for the cost of consumer goods to include the expense of industrial accidents and occupational diseases, there is no reason in the absence of clear congressional intent to strain the meaning of "accidental injury" in order to provide general health and life insurance for the special benefit of one group at the expense of all.

Congressional intent in this matter is further shown by the fact that the New York courts, in construing the New York Workmen's Compensation Law (upon which the federal Act was modeled) support petitioners' contention. *Woodruff* v. *Howes, supra; La Fountain* v. *La Fountain, supra; Lamphier* v. *Air Preheater Corp., supra; Beaver* v. *Town of Collins, supra; Flammer* v. *Bethlehem Steel Co.*, 268 A. D. 944, 51 N. Y. S. (2d) 258; (and the other cases cited in footnote to opinion below (R. 124)).

The decision of the Court below holding in effect that an injury is compensable merely if it occurs in the course of employment and has some reference to the work being performed will lead to the filing and granting of many claims of no validity as where death or the acute stage of an illness is merely coincidental with, or occurs after, business hours, with no causal relationship between work and "injury". As a practical matter under the view upheld below, there will be in this type of case usually little or nothing tangible showing causal relationship between work and the "injury". Professor Bohlen (25 Harvard Law Review 328, 344) aptly states the problem as follows:

> "The English courts, in their efforts to remedy the omission of Parliament to provide relief for workmen incapacitated by disease, have opened a wide door to claims of highly litigious character, * * *. At first glance there appears little or no abstract justice in giving relief to one whose physical structure is violently deranged while at work, and denying it to one who is incapacitated by disease clearly proven to have been contracted in his employer's service. But there is a great practical difference between the two. Where there is a distinct change in the physical structure of

the plaintiff, it is in the vast majority of cases possible and even easy to show some definite occurrence in the course of his service which has produced it, or at least the injury is generally one not likely to result from any other cause. The difficulty which will arise if compensation is allowed for disease lies in the fact that not only its existence but its origin can as a rule be proved only by the statement of the sufferer himself, corroborated by the testimony of his physician, which usually goes no further than a statement that the disease might be caused by some incident of the employment. Such claims are not only particularly easy to fabricate, but there is a great tendency in a sufferer to ascribe, without conscious dishonesty, his illness to some cause from which he may hope to obtain relief. But even if they are honestly put forward, the success or failure of such claims must depend upon a highly doubtful issue of fact. If such claims be allowed there will be a natural tendency on the part of every workman who suffers from disease to ask the opinion of the court whether it arose out of the business, and even where it is fairly clear that the illness did so arise, the interest of the employer will naturally induce him to contest the claim in the hope that the opinion of the court may be in his favor."

The question of accidental injury, due to the amount of litigation under the workmen's compensation acts of the various states and this federal Compensation Act, has given rise to so many conflicting judicial opinions that it is impossible to reconcile them and impractical to attempt to discuss them in any extended way. There are two views on the question at issue. The view adopted by the Court below seems to have originated in the English cases of *Fenton* v. *Thorley*, A. C. 443, 1903, and *Clover, Clayton & Co.* v. *Hughes*, L. R. A. C. 1910, pg. 242, 3 B.W.C.C. 275. It is respectfully submitted that the courts following the English rule overlook or give no effect to the qualifying effect of the words "accidental" or "by accident", and do not rightly interpret the statute. The Arizona Supreme Court in criticizing the reasoning of the English cases stated in *Pierce* v. *Phelps Dodge Corp.*, *supra*, 1020, as follows:

> "But it failed apparently to see that the only possible effect of the use of the words 'injured by' in the phrase is to establish that the accident referred to therein is the cause and not the effect. The injury referred to is obviously a result. If, then, in this connection the word 'accident' is also a result, it is tantamount to saying that the phrase means 'an injury by injury' or a 'result by a result.' Notwithstanding our respect for the decisions of so eminent a tribunal and the similarity of the language in the two acts, we cannot believe that our Legislature when it adopted our Compensation Act intended to attribute to ordinary words such an absurd meaning. If, on the other hand, the phrase was intended to mean a result from a certain kind of cause, it is intelligible and has a fixed and definite application. Had our Legislature intended that the word 'injury' and 'accident' both meant a result, it should and doubtless would have joined them by the conjunction 'or' rather than the preposition 'by.'"

The following comment is made concerning *Clover, Clayton & Co.* v. *Hughes, supra,* in 11 Columbia Law Review, page 44 :

> "* * * the decision is not very convincing. One cannot help feeling that there is a great force in the dissenting opinion which proceeded on the view that the man died from heart disease and not from 'accident.'"

The cases cited as authority in the opinions below mention with approval the English rule which for reasons set out above is unsound and does not reflect the congressional intent expressed in the federal Act. Moreover, the decision in each of those cases cited in the opinions below can be justified on the ground that as a matter of fact the injury was caused by excessive exertion or unusual circumstances in the course of employment.

V.

CONCLUSION.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in that the questions here involved may be permanently settled by this Court and a proper construction and interpretation made of Section 2 of the Longshoremen's and Harbor Workers' Compensation Act, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the United States Circuit Court of Appeals for the Second Circuit and finally reverse it.

NELSON T. HARTSON,
HOWARD BOYD,
GEORGE E. MONK,
Counsel for Petitioners.

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 986

HARBOR MARINE CONTRACTING COMPANY, A CORPORATION, AND LIBERTY MUTUAL INSURANCE COMPANY, A CORPORATION, PETITIONERS

v.

SAMUEL S. LOWE, DEPUTY COMMISSIONER OF THE UNITED STATES EMPLOYEES' COMPENSATION COMMISSION, SECOND COMPENSATION DISTRICT, AND FRANCES RIVIELLO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE DEPUTY COMMISSIONER IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court for the Southern District of New York (R. 110–114) is reported in 61 F. Supp. 964. The opinion of the Circuit Court of Appeals for the Second Circuit (R. 122–125) is reported in 152 F. 2d 845.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 24, 1945 (R. 125). The

petition for a writ of certiorari was filed on March 23, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judical Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether there was substantial evidence to sustain the finding of the Deputy Commissioner that the claimant's husband suffered death from an accidental injury, as that term is defined in Section 2 (2) of the Longshoremen's and Harbor Workers' Compensation Act, arising out of and in the course of his employment.

STATUTE INVOLVED

Section 2 of the Longshoremen's and Harbor Workers' Compensation Act of 1927, 44 Stat. 1424 (33 U. S. C. 902) provides as follows:

> Definitions. When used in this Act—
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> * * * * *
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> (2) The term "injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.
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> * * * * *
>
> (11) "Death" as a basis for a right to

compensation means only death resulting from an injury.

STATEMENT

Claimant Frances Riviello's deceased husband, Biagio Riviello, was working for the Harbor Marine Contracting Company on February 15, 1943, and was assigned to assist in the cleaning of the boiler of a ship known as Hull No. 162 in New York Harbor (R. 23, 33). The task involved sweeping up several inches of soot which covered the boiler floor and placing it in bags (R. 41, 42). The air within the boiler was very dusty, ventilation was poor, and it was necessary to wear damp cloths or masks over one's nose and mouth for protection (R. 42, 65).

After working for about an hour at this task, deceased complained that he was not feeling well and his gang foreman reported to the head foreman that Riviello "could not take it" (R. 33, 44, 50). The latter was then assigned to work on deck, carrying fifteen pound bags of soot from the ship to the dock, a distance of about a block (R. 34, 46, 53). After three-quarters of an hour of this work, deceased became very ill and, upon the recommendation of an Army doctor, located on the pier, he was sent to a hospital (R. 34, 49). It was found that he had suffered a myocardial infarct (R. 55). Deceased had apparently had a condition of coronary sclerosis, a deterioration of

the coronary arteries, at the time of his employment (R. 9, 57, 59), although he had never suffered from any previous attacks and was unaware of this illness (R. 26, 95).

Deceased remained in the hospital until March 30, 1943, when he was discharged and returned home. He remained at home, convalescing and doing no work, for several weeks, but thereafter suffered a recurrence of the pain over his heart which necessitated medical aid (R. 27). He reentered the hospital on April 26th and died there on May 5, 1943, from cardiac failure (R. 23).

His attending physician testified that his working conditions on February 15th had precipitated his seizure and death (R. 77–79, 91). The Deputy Commissioner affirmed this causal relationship, holding that deceased had sustained an accidental injury in his employment within the meaning of the Act (R. 9–10), and made an award for claimant and her children (R. 11). In an action to enjoin the award, brought by the Harbor Marine Contracting Company and its insurer, the Liberty Mutual Insurance Company, petitioners herein, the District Court for the Southern District of New York granted defendants' motions for a summary judgment, holding that there was substantial evidence to support the findings of the Deputy Commissioner (R. 113). Upon appeal, this judgment was unanimously affirmed by the Circuit Court of Appeals for the Second Circuit (R. 122–

125), which refused to disturb the definition of "accidental injury" that the Federal courts have consistently followed in their interpretation of this Act.

ARGUMENT

1. Both the district court and the circuit court of appeals in the instant case have held that the Deputy Commissioner's finding of death from accidental injury arising out of and in the course of deceased's employment was supported by the evidence.[1] Such finding of fact as well as the inferences to be drawn therefrom are final and conclusive and not subject to judicial review. *Voehl* v. *Indemnity Insurance Co.*, 288 U. S. 162, 166; *Del Vecchio* v. *Bowers*, 296 U. S. 280, 287; *South Chicago Coal and Dock Company et al.* v. *Bassett*, 309 U. S. 251; *Parker* v. *Motor Boat Sales*, 314 U. S. 244, 246.

Petitioners contend that the facts herein do not constitute "accidental injury" within the meaning of the statute, on the premise that the events that occurred were not "unusual, undesigned, fortuitous and unexpected" (Pet. 6). This contention, however, has been rejected by the federal courts in construing the Longshoremen's and Harbor Workers' Act. *Hoage* v. *Employers' Liability*

[1] The Longshoremen's and Harbor Workers' Act, which extends the principle of workmen's compensation to an injured employee or his family, is to be liberally construed. *Baltimore & Philadelphia Steamboat Co.* v. *Norton*, 284 U. S. 408, 414.

Assur. Corp., 64 F. 2d 715 (App. D. C.),[2] certiorari denied *sub nom. Employers' Liability Assur. Corp.* v. *Kerper*, 290 U. S. 637; *Commercial Casualty Ins. Co.* v. *Hoage*, 75 F. 2d 677 (App. D. C.), certiorari denied, 295 U. S. 733; *Hoage* v. *Royal Indemnity Co.*, 90 F. 2d 387 (App. D. C.), certiorari denied *sub. nom. Royal Indemnity Co.* v. *Cardillo*, 302 U. S. 736; *Pacific Employers' Ins. Co.* v. *Pillsbury*, 61 F. 2d 101 (C. C. A. 9); *Henderson* v. *Pate Stevedoring Co.*, 134 F. 2d 440 (C. C. A. 5); *Baltimore & O. R. Co.* v. *Clark*, 59 F. 2d 595 (C. C. A. 4).[3] Thus all of the Circuit Courts of Appeal that have passed on the question are in agreement that an existing disability or disease to which an individual may be subject at the time of his employment affords no basis for denying recovery under this Act if employment has aggravated the disease or disability and there is, hence, a causal relationship between the employment and the injury.

2. Petitioners rely on a number of state court decisions, interpreting various state workmen's compensation acts, to support their view. Because of the differences in the Acts and the differences in the liberality of construction, both from

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[2] The Longshoremen's and Harbor Workers' Act was made applicable to the District of Columbia by the Act of May 17, 1928, 45 Stat. 600.

[3] This contention was early discarded in England when it was first raised in connection with the English workmen's compensation act, *Fenton* v. *J. Thorley & Co., Ltd.* [1903], A. C. 443; *Clover, Clayton & Co., Ltd.* v. *Hughes* [1910], A. C. 242.

State to State and in comparison with the Federal Act, these decisions do not seem to warrant detailed discussion. Particular mention is made of a few decisions of the New York State courts, such as *La Fountain* v. *La Fountain,* 284 N. Y. 729, because of the fact that the Federal statute was patterned after the New York Act. But the Federal Act has by now been independently interpreted by the Federal courts, and, indeed, as the court below pointed out (R. 124), subsequent New York cases cast considerable doubt upon the more restrictive interpretation. The present trend of the New York decisions seems to conform more closely to the decisions of the Federal courts. *Abrams* v. *Albany County,* 266 App. Div. 807, 885, and the cases cited therein.

3. Petitioners allege that the decision below will have the effect of converting workmen's compensation into health or life insurance, will be detrimental to workers since it will raise the physical standards for laborers, and will saddle the public with the additional expense involved in insuring against cases of this kind. These arguments have long been advanced and rejected by the courts. *E. g., Grain Handling Co.* v. *Sweeney,* 102 F. 2d 464, 466 (C. C. A. 2), certiorari denied *sub nom. Grain Handling Co.* v. *McManigal,* 308 U. S. 570; cf. *Madden's Case,* 222 Mass. 487. Compensation was not awarded to the claimant because her husband had heart disease; the deputy commissioner found that there was a causal

relationship between the decedent's work and working conditions and his injury (R. 9). Cf. *Carson* v. *Cardillo*, 132 F. 2d 604 (App. D. C.); *Trudenich* v. *Marshall*, 34 F. Supp. 486 (W. D. Wash.).

CONCLUSION

The decision below is correct and there exists no conflict. We respectfully submit that the petition for a writ of certiorari should be denied.

J. HOWARD MCGRATH
Solicitor General.
JOHN F. SONNETT,
Assistant Attorney General.
PAUL A. SWEENEY,
LEON FRECHTEL,
Attorneys.

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